

GRCA001

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

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FRED HARVEY, INC.
Grand Canyon National Park

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CC-GRCA001-69
Contract No. ~~14-10-0-900-158~~ Executed March 26, 1969

Covering the Period

January 1, 1969 through December 31, 1998

Amended by Letter dated April 17, 1975
Amended by Amdnment No.1 dated August 31, 1979
Amended by letter dated January 2, 1980
Amended by Amendment No. 2 dated October 30, 1984

Contract No. 14-10-9-900-158

THIS CONTRACT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Fred Harvey, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, Grand Canyon National Park was established by Congress to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave such park unimpaired for the enjoyment of future generations; and

WHEREAS, the accomplishment of the said purposes requires that facilities and services be provided for the public visiting the said park and that all private interest shall be excluded except so far as may be necessary for the accomplishment of said purposes, including accommodation of the public; and

WHEREAS, the Concessioner is authorized pursuant to Concession Contract No. 14-10-0100-346, which expires by limitation of time on July 31, 1974, to provide accommodations, facilities, and services for the public within the said park; and

WHEREAS, the Concessioner has provided satisfactory service to the public under such contract and the Secretary desires the Concessioner to continue to provide such necessary facilities and services and to provide a substantial improvement and building program in consideration of a new long-term contract, and to continue to operate existing facilities and future facilities and services at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the

assumption of the risk of operating loss, and it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a fair profit; and

WHEREAS, it is the intention of the parties that any acts, policies, or decisions of the Secretary under this contract will be consistent with reasonable protection to the Concessioner against loss of its investment and against substantial increase in costs, hazards, and difficulties of its operations hereunder:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-3), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and amendatory thereof, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows:

SEC. 1. Term of Contract. (a) This contract shall supersede and cancel Contract No. 14-10-0100-346 effective upon the close of business December 31, 1968.

(b)(1) The Concessioner shall undertake an improvement and building program of not less than \$5,000,000 in two phases. Phase one of such an improvement and building program shall be completed and made available for public use on or before December 31, 1973 at a cost of not less than \$3,000,000. The details of phase one are set forth in Exhibit A attached hereto which shows the starting dates and approximate cost estimates.

(2) The parties hereto agree that Exhibit A represents phase one of the Concessioner's improvement and building program, but it is recognized that the specific details set forth in Exhibit A may be subject to amendment from time to time by mutual concurrence of the Secretary and the Concessioner.

(3) Because of the pressing need for additional visitor facilities and services, the Concessioner has, with the approval of

the National Park Service, initiated the construction of certain facilities called for in phase one of the above-mentioned construction and improvement program. Any construction or related work performed on the items listed in the aforesaid Exhibit A in advance of the execution date of this contract will be considered as applying against the aforesaid improvement and building program.

(4) During the second five-year period of this contract, the Concessioner shall invest an additional \$2,000,000 in the construction of such additional facilities as may be mutually agreed upon, after completion of the 1971 operating season.

(c) In the event the Concessioner completes the improvement and building program and makes such facilities available for public use on or before December 31, 1978, this contract shall be for and during the term of thirty (30) years from January 1, 1969, except as it may be terminated as herein provided. The Concessioner shall demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval of plans and specifications, the Concessioner shall provide the Secretary with such assurances that the improvement and building program will be satisfactorily completed, as the Secretary, in his judgment may require, in the form of contractor's completion bond, completion bond of the Concessioner in an amount not to exceed the low bid for the approved work, or such other document as may be satisfactory to the Secretary. The time for beginning and completing such improvement and building program may be extended in the discretion of the Secretary if the Concessioner is delayed due to unavoidable circumstances beyond its control in beginning or completing the said improvement and building program. In the event the Concessioner fails to complete the said program within the time allotted therefor then this contract shall be for and during the term of ten (10) years from January 1, 1969, except as it may be terminated as herein provided. If the Concessioner, in good faith, however, commences each portion of phase one of the program on or before July 1 of each year in which it is listed for starting on Exhibit A, or such subsequent date as may be approved by the Secretary; reaches agreement with the Secretary on the items to be included in phase two of the program; and commences each portion of phase two as agreed upon or by such subsequent date as may be approved

by the Secretary and for reasons considered by the Secretary to be beyond the control of the Concessioner, fails to complete the said program within the time hereinbefore granted, the Secretary may grant such additional period of time within which to complete the said program, with appropriate extension of the lesser term of this contract if necessary, as may appear reasonable in the circumstances, and if the said program is completed in such additional period as may be granted hereunder, this contract shall be effective for the full term of thirty (30) years hereinbefore granted, except as it may be terminated as herein provided.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of this contract for such stated periods as the Secretary may deem proper upon written application showing circumstances beyond its control warranting such relief.

SEC. 2. Accommodations, Facilities, and Services Authorized.

(a) The Secretary authorizes the Concessioner, during the term of this contract, to provide accommodations, facilities, and services for the public on the South Rim of Grand Canyon National Park as follows:

- (1) Lodging accommodations.
- (2) Food and beverage service facilities.
- (3) Merchandising facilities and services.
- (4) Transportation and sightseeing facilities and services.
- (5) Automobile service stations.
- (6) Campers' service facilities.
- (7) Campgrounds and trailer villages under such arrangements as may be approved by the Secretary.
- (8) Any and all services and facilities which are customary in connection with the above operations.

(b) The Secretary reserves the right to determine and control the nature and type of merchandise and services which may be sold or furnished by the Concessioner within the park.

SEC. 3. Plant, Personnel, and Rates. (a) The Concessioner shall maintain and operate the said accommodations, facilities, and

services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with an opportunity to make a fair profit on the total of its operations hereunder.

(b)(1) All rates and prices charged to the public by the Concessioner for accommodations, services, or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary, not inconsistent with an opportunity for the Concessioner to make a fair profit from the total of its operations hereunder. In determining fair profit for this purpose, consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attaching to the enterprise; the cost and current sound value of capital assets used in the operation; the rate of profit on investment and percentage of profit in gross revenue considered normal in the type of business involved; the financial history and the future prospects of the enterprise; the efficiency of management; and other significant factors.

(2) Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services, or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

SEC. 4. Land and Improvements. (a) The Secretary will assign for use by the Concessioner during the term of this contract, such pieces and parcels of land and government improvements as may be, in his judgment, necessary and appropriate for the operations authorized hereunder.

(b) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary or desirable for the operations authorized hereunder,

subject to the prior approval by the Secretary of the location, plans, and specifications thereof, and the Secretary may prescribe the form and contents of application for such approval.

(c) The Secretary shall have the right at any time to enter upon any lands and improvements assigned hereunder for any purpose he may deem reasonably necessary for the administration of the park and the government services therein, but not so as to destroy or unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

(d) "Government improvements" as used herein, means the buildings, structures, fixtures, equipment, and other improvements upon the lands assigned hereunder, constructed or acquired by the government and provided by the government for the purposes of this contract. The Concessioner relinquishes and waives any right to any possessory interest in such government improvements. The cost of any alterations, additions, or improvements heretofore or hereafter provided by the Concessioner to government improvements may be expensed or amortized.

(e) The Secretary hereby grants to the Concessioner the right to occupy and use such government improvements during the term and subject to the conditions of this contract.

(f) The Concessioner shall provide all necessary maintenance and repairs of such government improvements, provided that, if a government improvement is damaged by casualty or otherwise to an extent requiring major repair or rebuilding, then the Concessioner shall not be obligated to repair or rebuild such improvement.

SEC. 5. Concessioner's Improvements. (a) "Concessioner's improvements", as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract, including (1) all such improvements upon the lands assigned at the date hereof, except government improvements; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned, by the Concessioner with the consent of the Secretary.

(b) It is the intention of the parties that the Concessioner shall have a possessory interest in all concessioner's improvements consisting of all incidents of ownership, except legal title which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the park. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or taken for public use without just compensation. Whenever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under Section 13 herein shall constitute just compensation in the circumstances therein described.

(c) Any salvage resulting from the removal, severance, or demolition of a concessioner's improvement or any part thereof shall be the property of the Concessioner.

(d) In the event that a concessioner's improvement is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the Concessioner shall, promptly upon the request of the Secretary, restore the site as nearly as possible to a natural condition.

SEC. 6. Facilities Operated by Concessioner on Right of Way and Station Grounds of the Atchison, Topeka, and Santa Fe Railway Company. It is the intention of the parties hereto that the provisions of this contract providing for services and accommodations, as described in Section 2 hereof, and providing for compensation for Concessioner's possessory interest, as described in Section 13 hereof, shall be considered as applying to the Concessioner's operations conducted on the right of way and station grounds of the Atchison, Topeka, and Santa Fe Railway Company within the exterior boundaries of the park and to the improvements provided by the Concessioner for the purposes of this contract within the exterior boundaries of the park, including the improvements acquired by the Concessioner from the Atchison, Topeka,

and Santa Fe Railway Company, to the same extent as to the Concessioner's operations and concessioner's improvements on assigned lands, as provided for in subsection 4(a) of this contract. Nothing in this contract shall, however, be deemed to limit or to be in derogation of the rights of the Atchison, Topeka, and Santa Fe Railway Company in such right of way and station grounds or any improvements thereon other than those provided by the Concessioner for the purpose of this contract. For the purpose of this contract, and in computing the franchise fee as covered by Section 10 of this contract, the entire operation of the Concessioner within the exterior boundaries of the park shall constitute a single unit and shall be considered as a whole by the Secretary in making his determinations pursuant to the provisions of this contract.

SEC. 7. Utilities. (a) The Secretary shall furnish utilities to the Concessioner, when available, and at reasonable rates to be fixed by the Secretary, for use in connection with the operations authorized hereunder.

(b) Should any such service not be available or sufficient, the Concessioner may, with the approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside of the park, or may install the same within the park, subject to the following conditions:

(1) Water rights perfected during the term of this contract shall be perfected in the name of the United States. The Concessioner shall not remove or obliterate any ditches or other water systems installed by it in connection with such water rights without first obtaining written approval from the Secretary.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the government for such service shall be approximately the average cost per unit of providing such service.

(3) All plans, appliances, and machinery to be used in connection with the privileges granted in this section, as well as the

location and installation of such appliances and machinery shall first be approved by the Secretary.

SEC. 8. Accounting Records and Reports. (a) The Concessioner shall maintain such accounting records as may be prescribed by the Secretary. It shall submit annually as soon as possible, but not later than sixty (60) days after the 31st day of December, a report for the preceding year giving such information about its business and operations under this contract as may be prescribed by the Secretary, and such other reports and data as may be required by the Secretary. The Secretary shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioner, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of the Concessioner and any subconcessioner have access to and the right to examine any of their pertinent books, documents, papers, and records related to this concession contract.

SEC. 9. Opening Balance Sheet. Within ninety (90) days of the execution of this contract, or its effective date, whichever is later, the Concessioner shall submit a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations. That balance sheet shall be accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. The Secretary reserves the right to verify such balance sheet by audit of the books and records of the Concessioner. If exception is taken by the Secretary to any item or items in the balance sheet as a result of such audit he shall notify the Concessioner of the exception and the books and records will be adjusted accordingly by the Concessioner.

SEC. 10. Franchise Fee. (a) The Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of

each year during the term of this contract a franchise fee for the privileges authorized herein, as follows:

(1) An annual fee for the use of any government-owned structures assigned to the Concessioner for the purposes of this contract, based on the value of the government-owned structure or structures provided, pursuant to the schedule, identified as "Exhibit B" attached to and made a part of this contract.

(2) In addition to the foregoing, a further sum equal to two per cent (2%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b)(1) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from all sales, including those through vending machines and other coin-operated devices, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the privileges authorized in this contract, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the park, and excluding gross receipts from the sale of genuine United States Indian and native handicraft, intra-company earnings on account of charges to other departments of the operation (such as laundry), charges to employees for meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the park, sales of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies.

(2) The term "gross receipts of subconcessioners" as used in subsection (b)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, including that through vending machines or other coin-

operated devices, as a result of the exercise of the privileges conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioners shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of December of each year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (b)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed pursuant to the preceding sentence in computing the franchise fee payable to the Secretary as provided for in subsection (a) of this section.

(c) In case of dispute as to the computation of franchise fees to be paid under this contract, the determination of the Secretary, consistent with the provisions of this section, shall be final.

(d) Within sixty (60) days after the end of the 5th, 10th, 15th, 20th, and 25th years of this contract, at the instance of either party hereto, the amount and character of the franchise fee provided for in subsection (a) of this section may be reconsidered and such franchise fee provisions inserted in lieu thereof as may be agreed upon between the parties hereto in a written supplemental agreement.

SEC. 11. Bond and Lien. The Secretary may, in his discretion require the Concessioner to furnish a joint and several bond conditioned upon the faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate, not in excess of five thousand dollars (\$5,000). As additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the park.

SEC. 12. Termination of Contract by Secretary. In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the Secretary may terminate this contract by the following procedure:

(a) The Secretary shall give to the Concessioner written notice specifying the particulars of the alleged default or unsatisfactory performance.

(b) Not less than thirty (30) days after receipt by the Concessioner of such notice, the Secretary shall grant to the Concessioner an opportunity to be heard upon the charges.

(c) Following such opportunity to be heard, the Secretary shall have power to determine whether there has been such a default or unsatisfactory performance.

(d) If the Secretary shall decide that there has been such a default or unsatisfactory performance, he shall give to the Concessioner written notice of such decision specifying the particulars thereof.

(e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such reasonable period of time as may be fixed by the Secretary, then the Secretary may declare this contract terminated upon such date or upon such contingency as he may deem proper to protect the public interest, provided that such termination of this contract shall not terminate or impair the Concessioner's possessory interest in its improvements, as hereinbefore defined.

SEC. 13. Compensation for Concessioner's Possessory Interest.

(a)(1) If for any reason, the Concessioner shall cease to be authorized to conduct the operations authorized hereunder, or any of them, and thereafter such operations are to be conducted by a successor, whether a private person or an agency of the government, (1) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in concessioner's improvements and all other property of the Concessioner used or held for use in connection with such operations; and (2) the Secretary will require such successor, as a condition to the granting of a permit or contract to operate, to purchase from the Concessioner such possessory interest and other property, and to pay the Concessioner the fair value thereof. The fair value of a possessory interest shall be deemed to be the sound

value of the improvement to which it relates at the time of transfer of such possessory interest, without regard to the term of the contract. The sound value of any structure, fixture, or improvement shall be determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. Merchandise and supplies shall be valued at replacement cost including transportation. Equipment shall be valued at replacement cost less depreciation and obsolescence. If the Concessioner and the proposed purchaser cannot agree upon the fair value of any item or items, the fair value thereof shall be determined by the majority vote of a board of three appraisers, selected as follows: Each shall name one member of such board and the two members so named shall select the third member. If the third member is not so selected within thirty days, the American Arbitration Association shall be requested by the Secretary to name such third member. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the Board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute.

(2) If the Secretary shall determine that, during the term of this contract or upon its termination for any reason, it is desirable to discontinue the operations authorized hereunder, or any of them, and/or to abandon, remove, or demolish any of the concessioner's improvements, then the Secretary will, before making such determination effective, take such action as may be necessary to assure the Concessioner of compensation (1) for its possessory interest in such improvements in the amount of their book value, provided that if such an improvement is to be replaced by the Concessioner then such compensation shall be the sound value thereof determined as provided in subsection (a)(1) of this section; (2) for the cost of restoring the land to a natural condition; (3) for the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination; and (4) for the actual cost to the Concessioner of such removal or demolition, less salvage resulting therefrom.

(3) Payment of the compensation provided for in this section will terminate the Concessioner's possessory interest in the improve-

ments to which it relates and will constitute just compensation for the termination or taking of such possessory interest. The Concessioner relinquishes and waives any right of compensation for any possessory interest in any alterations, additions, or improvements to government improvements heretofore or hereafter provided by the Concessioner.

(b) To avoid interruption of service to the public upon the termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator designated by the Secretary of the concessioner's improvements and personal property, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall not be obligated to accept an annual fee for the use of such improvements of less than the sum of the annual depreciation on such improvements, plus three per cent (3%) return on the book value of such improvements.

SEC. 14. Assignment or Mortgage. No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the Secretary. The Concessioner's possessory interest in concessioner's improvements may be assigned, transferred, encumbered or relinquished only with the prior approval in writing by the Secretary. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon, the assets of the Concessioner in the park shall be issued, except for the purposes of installing, enlarging, or improving plant and equipment, and extending facilities for the accommodation of the public in the park, and then only upon prior authorization in writing in each case, obtained from the Secretary. In the event of default on such a mortgage or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the possessory interest of the Concessioner in concessioner's improvements, but shall not thereby acquire operating rights or privileges.

SEC. 15. Approval of Subconcession Contracts. All contracts

and agreements proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract shall be submitted to the Secretary for his approval and shall be effective only if approved. In the event any such contract or agreement is approved the Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of December of each year a sum equal to fifty per cent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 10 of this contract.

SEC. 16. Accommodations for Government Employees. The Concessioner shall furnish available transportation within the park free of charge, and other accommodations at reduced rates, to Federal and State employees visiting the park on official business and to the employees of the park away from their regularly assigned stations, upon the presentation of proper credentials. Payments made by such employees in the absence of such credentials shall be without prejudice to a refund upon later submission thereof.

SEC. 17. Preferential Right. (a) The Concessioner is granted a preferential right, not an exclusive or monopolistic right, to provide public accommodations, facilities, and services on the South Rim of Grand Canyon National Park, and in said Canyon, of the character authorized hereunder, excluding, however, Havasu Canyon, as covered by the Act of February 26, 1919 (40 Stat. 1175; 16 U.S.C., 2d ed. 223), provided that such preference shall not apply against motor vehicles operated on a general, infrequent, and non-scheduled tour on which the visit to the South Rim is an incident to such tour, carrying only roundtrip passengers traveling from the point of origin of the tour. In the event it is deemed to be in the public interest, the Secretary may terminate or modify the preferential right on transportation after December 31, 1973. The Secretary will request the Concessioner to provide such new or additional accommodations, facilities, or services, of the same character as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional facilities, the Concessioner shall be allowed sixty (60) days in which to prepare and present its case but, after consideration of the Concessioner's presentation and such hearings or testimony as the Secretary may consider appropriate, the decision of the Secretary in the premises shall be final. If, after such decision, the Concessioner declines or fails within a reasonable time

to comply with the request or demand of the Secretary, then the Secretary may, in his discretion, authorize others to provide such accommodations, facilities, or services, but only upon terms and conditions substantially equivalent to those offered or allowed to the Concessioner. The preferential right herein granted shall be extended automatically to any lands hereafter acquired and included within the park as covered by this contract unless in order to acquire any such lands the Secretary finds it necessary or desirable to permit the owner thereof to continue to operate such facilities for the accommodation of the public as may be existent upon the lands at the time of acquisition.

(b) Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by other concessioners now authorized by the Secretary to provide accommodations therein for the public or their preferential rights. This subsection shall include also the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 18. Cooperation in Emergencies. The Concessioner shall do all within its power, both independently of and at the request of the park officers, to prevent and suppress forest fires, and shall use its best endeavors to the end that its employees and contractors and the employees of contractors will do likewise. The Concessioner shall also assist in the rescue and preservation of lives and property in emergencies within the park, such as floods and searching for missing persons.

SEC. 19. Insurance. The Concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is customary among prudent operators of similar businesses under comparable circumstances.

SEC. 20. Concessioner's Employees. (a) The Concessioner shall require its employees who come in direct contact with the public, so far as practicable and if required by the Secretary, to wear a uniform or badge by which they may be known and distinguished as the employees of said Concessioner.

(b) The Concessioner shall not employ or retain in its service, or permit to remain upon any of the premises herein provided for, any person declared by the Secretary to be unfit for such employment or otherwise objectionable.

(c) The Concessioner shall require its employees to observe a strict impartiality as to rates and services and in all circumstances to exercise courtesy and consideration in their relations with the public. The Concessioner may, subject to the control of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder.

(d) The Concessioner shall arrange, subject to the approval of the Secretary, with the authorized hospital and medical concessioner in the park, for hospital and medical services for its employees in the park.

SEC. 21. Procurement of Goods, Equipment, and Services. In computing net profits for any purpose of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 22. Nondiscrimination. The Concessioner shall comply with the requirements of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and with regulations heretofore or hereafter promulgated, relating to non-discrimination in employment and in providing facilities and services to the public, as set forth in Exhibit C attached hereto and made a part hereof.

SEC. 23. General Provisions. (a) Operations under this contract shall be subject to the laws of Congress governing the park and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.

(b) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(c) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract

or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Washington, D. C., this 26th day of March, 1969.

UNITED STATES OF AMERICA

By *Edward Samuel*
Acting Director, National Park Service

ATTEST:

FRED HARVEY, INC.

By *J. Robinson*
Title *Secretary*

By *Lillian Scott*
Title *President*
Date *1/14/69*

10450

Amendment No. 1
Concession Contract No. 14-10-9-900-158
Fred Harvey, Inc.
Grand Canyon National Park

THIS AGREEMENT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Fred Harvey, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. 14-10-9-900-158 on March 26, 1969, whereby the Concessioner is authorized to provide facilities and services for the public on the South Rim of Grand Canyon during the period from January 1, 1969, through December 31, 1998; and

WHEREAS, subsection 10(d) of said contract provides that within sixty (60) days after the 5th, 10th and 15th, 20th, and 25th years of the contract, at the instance of either party, the provisions for the franchise fee in subsection 10(a) may be reconsidered and such provisions inserted in lieu thereof as may be agreed upon between the parties in a written supplemental agreement; and

WHEREAS, the Secretary, by letter of February 23, 1979, advised the Concessioner that a revision of the franchise fee was proposed and the Concessioner has agreed to an increased franchise fee; and

WHEREAS, Title V, Section 503 of the Rehabilitation Act of September 26, 1973, P. L. 93-112, provides for revised nondiscrimination provisions to be included in all Government contracts and which were provided to the Concessioner in a letter of April 17, 1975:

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. 14-10-9-900-158 is hereby amended, effective January 1, 1979, as follows:

1. Amend Section 10, Franchise Fee, as follows:

Delete subsection (a)(2) in its entirety, and substitute the following:

(2) In addition to the foregoing, a further sum equal to two and a half percent (2½%) of the Concessioner's gross receipts, as herein defined for the preceding year.

2. Amend Section 22, Nondiscrimination, by deleting in its entirety and substituting in lieu thereof the following:

Section 22, Nondiscrimination. The Concessioner shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11375 of October 13, 1967, and (b) Title V, Section 503 of the Rehabilitation Act of September 26, 1973, P. L. 93-112, which require Government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals, and with the regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and in providing facilities and services to the public, as set forth in Exhibit C attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at San Francisco, CA, this 31st day of August, 1979.

United States of America

By Lawrence H. Chapman
Regional Director, Western Region
National Park Service

Attest:

By Richard A. Naill, II
Richard A. Naill, II

Title President, Fred Harvey, Inc.,
National Parks & Retail Division

By George Fujikawa
George Fujikawa
Title Vice President, Finance, Hospitality
Group
Date 8/1/79

WASO
GRCA001

AMENDMENT NO. 2

CONCESSION CONTRACT NO. 14-10-9-900-158
AMFAC HOTELS AND RESORTS, INC.
GRAND CANYON NATIONAL PARK

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Amfac Hotels and Resorts, Inc., a corporation organized and existing under the laws of the State of Arizona, hereinafter referred to as the "Concessioner":

W I T N E S S E T H

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. 14-10-9-900-158 on March 26, 1969, whereby the Concessioner is authorized to provide facilities and services for the public on the South Rim of Grand Canyon during the period from January 1, 1969, through December 31, 1998; and

WHEREAS, subsection 10(d) of said contract provides that within sixty (60) days after the 5th, 10th and 15th, 20th, and 25th years of the contract, at the instance of either party, the provisions for the franchise fee in subsection 10(a) may be reconsidered and such provisions inserted in lieu thereof as may be agreed upon between the parties in a written supplemental agreement; and

WHEREAS, the Secretary, by letter of January 13, 1984 advised the Concessioner that a revision of the franchise fee was proposed and the Concessioner has agreed to an increased franchise fee:

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that the Concession Contract No. 14-10-9-900-158 is hereby amended, effective January 1, 1984 as follows:

1. Amend Section 10, Franchise Fee, as follows:

Delete subsection (a)(2) in its entirety and substitute the following:

"(2) In addition to the foregoing, a further sum equal to two and seven tenths percent (2.7%) of the Concessioner's gross receipts, as herein defined for the preceding year."

IN WITNESSETH WHEREOF, the parties hereto have subscribed their names and affixed their seals.

Dated at San Francisco, California this 30th day of October, 1984.

United States of America

BY: Lawrence H. Chylerman
Regional Director, Western Region
National Park Service

ATTEST:

AMFAC HOTELS AND RESORTS, INC.

BY: John W. Agath

BY: [Signature]

TITLE: Dir. of Administration

TITLE: President, Fred Harvey Co.

DATE: October 29, 1984

Handwritten: 3/24/91
Hyde P.H.
Orig. Cont.
File

CC-GRCA001-69
AMENDMENT NO. 3
PAGE 1 OF 5

AMENDMENT NO. 3
CONCESSION CONTRACT CC-GRCA001-69
AMFAC RESORTS, INC.
GRAND CANYON NATIONAL PARK
ARIZONA

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary", and Amfac Resorts, Inc., a corporation organized and existing under the laws of the State of Delaware, by previous assignment, hereinafter referred to as the "Concessioner":

W I T N E S S E T H

THAT WHEREAS, the Secretary entered into Concession Contract No. CC-GRCA001-69 (formerly 14-10-9-900-158) on March 26, 1969 whereby the Concessioner is authorized to provide specific accommodations, facilities and services for the public on the South Rim of Grand Canyon National Park for the period from January 1, 1969 through December 31, 1998; and

WHEREAS, the Concessioner and the Secretary have agreed to an increase in benefits to Grand Canyon National Park through the establishment of a Building Improvement Fund and a Visitor Services Improvement Account:

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that the Concession Contract CC-GRCA001-69 is hereby amended, effective January 1, 1990 as follows:

1. Delete EXHIBIT B, effective January 1, 1969 and replace it with revised EXHIBIT B, effective January 1, 1990.

*** GRAND CANYON NATIONAL PARK ***
*** NATIONAL PARK SERVICE - WESTERN REGION ***

2. Replace subsection 10.(a)(1) in its entirety, as follows:

(1) As consideration for the use and occupancy of Government Improvements herein provided, Concessioner shall create and manage a "Building Improvement Fund" (Fund) by which it will undertake on a Project basis a repair and improvement program for Government Improvements as directed by the Superintendent and in accordance with written approval of individual Projects and Project priorities by the Regional Director. Projects will include improvements to Government Improvements and related infrastructure which directly support concession activities.

Projects paid for from the Fund will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of government Improvements as required by Sections 3 and 4(f), or otherwise, of the Concession Contract from funds other than the "Building Improvement Fund" and the Fund will not be used for purposes for which those Sections would apply. Concessioner shall have no ownership, possessory interest or other interest in improvements made from the Building Improvement Fund.

In order to carry out the Fund program the Concessioner shall deposit by the fifth day of each month a sum equal to one-twelfth of the amount of the Building Improvement Fund Allocation as established in EXHIBIT B into (an) interest bearing account(s) at (a) Federally insured financial institution(s). The account(s) shall be maintained separately from all other Concessioner funds and copies of monthly bank statements shall be provided to the Superintendent.

The Concessioner shall submit annually, no later than March 31, of the year following the Concessioner's accounting year a statement reflecting total activity in the Building Improvement Fund for the preceding financial year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

The balance in the Building Improvement Fund shall be available for projects in accordance with the Fund's purpose. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. Fund activities shall be initiated and managed as a series of Projects with objectives for each Project defined as part of the Superintendent's approval document. For all expenditures made for each project from the Fund, Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Building Improvement Fund shall be expended for approved Projects or the obligations to do so shall be transferred to a successor concessioner, if any, or shall be otherwise liquidated at the direction of the Secretary.

3. Add to Section 1 the following new Subsection (e):

(e) In addition to the foregoing, the Concessioner shall create and manage a "Visitor Services Improvement Account" (Account) by which it will undertake on a Project basis improvements and infrastructure which directly support concession activities. Projects will be selected by the Superintendent in accordance with the written approval of individual Projects and Project priorities by the Regional Director.

Projects paid for from the Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of government Improvements as required by Sections 3 and 4(f), or otherwise, of the Concession Contract from funds other than the Account and the Account will not be used for purposes for which those Sections would apply. Concessioner shall have no ownership, possessory interest or other interest in improvements made from the Account.

In order to carry out the Account projects the Concessioner shall deposit by the fifth day of each month a sum equal to one-half of one percent (1/2%) of the Concessioner's gross receipts for the previous month, as defined herein, into (an) interest bearing account(s) at (a) Federally insured financial institution(s). The account(s) shall be maintained separately from all other Concessioner funds and copies of monthly bank statements shall be provided to the Superintendent.

The Concessioner shall submit annually, no later than March 31, of the year following the Concessioner's accounting year a statement reflecting total activity in the Account for the preceding financial year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

The balance in the Account shall be available for projects in accordance with the Account's purpose. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. Account activities shall be initiated and managed as a series of Projects with objectives for each Project defined as part of the Superintendent's approval document. For all expenditures made for each project from the Account, Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Account shall be expended for approved Projects or the obligations to do so shall be transferred to a successor concessioner, if any, or shall be otherwise liquidated at the direction of the Secretary.

IN WITNESSETH WHEREOF, the parties hereto have subscribed their names and affixed their seals.

Executed in triplicate, at Washington, District of Columbia. this
19th day of September, 1991.

AMFAC RESORTS, INC.

UNITED STATES OF AMERICA

BY: 

Mr. Allen Naille II
President

BY: 

James M. Ridenour
Director
National Park Service

DATE: 8/5/91

ATTEST:

BY: _____

(Type name) _____

TITLE: _____

DATE: _____

AMFAC RESORTS, INC.
GRAND CANYON NATIONAL PARK

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director the National Park Service and the Regional Director, Intermountain Region, hereinafter referred to as the "Secretary", and Amfac Resorts, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract CC-GRCA001-69 (formerly 14-10-9-900-158) on March 26, 1969 whereby the Concessioner was authorized to provide accommodations, facilities and services for the public on the South Rim of Grand Canyon National Park for the period from January 1, 1969 through December 31, 1998; and

WHEREAS, the Secretary and the Concessioner have agreed to reconsider the nature and character of the consideration paid to the Secretary by the Concessioner:

NOW THEREFORE, the parties hereto covenant and agree to and with each other that the Concession Contract CC-GRCA001-69 is hereby amended as follows:

A. Effective on the first day of the first full month following the date of execution of this amendment;

Delete the EXHIBIT B, that was effective as of January 1, 1990, and replace it with the attached, revised EXHIBIT B.

B. Effective on the first day of the first full month following the date of execution of this amendment;

Delete the text of sub-section 10. (a)(1) that was effective as of January 1, 1990, and mark the sub-section "not used". Reports required by the deleted text are to be made through the filing of the Annual Financial Report following the deletion.

Transfer the entire balance of the Building Improvement Fund, including principal, interest and any amounts due for use and occupancy through the date of transfer, to the Government Improvement Account established by part F. of this amendment.

C. Effective on the first day of the first full month following the date of execution of this amendment, and assuring that funds accrued as franchise fees prior to this effective date are to be deposited in the same time and manner as previously;

Delete, in sub-section 10.(a)(2) that was effective as of January 1, 1984, the phrase "two and seven tenths percent (2.7%)" and substitute in its place "zero percent (0%)".

D. Effective on the first day of the first full month following the date of execution of this amendment;

Delete Section 1(e) that was effective as of January 1, 1990. Reports required by the deleted text are to be made through the filing of the Annual Financial Report following the deletion.

Transfer the entire balance of the Visitor Services Improvement Account, including principal, interest and any amounts due through the date of transfer, to the Capital Account established by part F. of this amendment.

Within 60 days after December 31, 1997, deposit to the Capital Account an amount equal to ONE HALF OF ONE PERCENT (0.5%) of the gross receipts, as herein defined, for the period from January 1, 1994 through December 31, 1997.

E. Add a new Exhibit to the contract, EXHIBIT D, which is attached.

F. Effective on the first day of the first full month following the date of execution of this amendment, the following new section, Section 10.1 Account, is added to the contract:

SEC. 10.1 ACCOUNTS

(a) GOVERNMENT IMPROVEMENT ACCOUNT. (a)(1) As consideration for the use and occupancy of Government Improvements herein provided, the Concessioner shall establish and manage a "Government Improvement Account" (GIA). Funds in the GIA are

not government funds. The funds in this account, including interest earned thereon, will be used in accordance with Exhibit "D" only to undertake, on a project basis, repairs and improvements to Government Improvements listed in Exhibit "B" to this CONTRACT, as directed by the Superintendent in writing and in accordance with project proposals approved by the Intermountain Regional Director.

(a)(2) Improvements paid for from the GIA will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as otherwise required by this CONTRACT from Concessioner funds exclusive of funds contained in the Government Improvement Account, and, specifically, funds from such account shall not be used for the purposes of fulfilling the Concessioner's obligations under Section 3(a), and 4(f) of this CONTRACT. The Concessioner shall have no ownership, Possessory Interest, or other interest in improvements made from funds from the Government Improvement Account.

(a)(3) The Concessioner shall deposit within fifteen days after the last day of each month that the Concessioner operates the sum ("SUM") of TWELVE HUNDRED AND FIFTY DOLLARS (\$1250) (a prorata amount in the month of transfer of the Building Improvement Fund balance) into an interest bearing account(s) at a Federally insured financial institution. The account(s) shall be maintained separately from all other Concessioner funds, and copies of the monthly account statements shall be provided to the Secretary. The Concessioner shall submit annually as part of the annual financial statement a statement reflecting total activity in the Government Improvement Account for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

The balance in the Government Improvement Account shall be available for projects in accordance with the account's purpose. Advances or credits to the account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing in advance of any expenditure being made in accordance with and subject to the terms and conditions of this CONTRACT, as amended. For all expenditures made for each project from the account, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

An interest charge will be assessed on overdue deposits for each day that the deposit is delayed beyond the fifteen (15) day period provided for herein. The per cent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in

the Treasury Fiscal Requirements Manual. Interest rate information will be provided by the Superintendent to the Concessioner on request.

(a)(4) Upon the expiration or termination of this CONTRACT, or upon assignment or sale of interests related to this CONTRACT, the unexpended balance remaining in the Government Improvement Account shall, at the direction of the Secretary, be transferred to an account(s) approved by the Secretary and established by a successor concessioner, be expended by the Concessioner for approved projects, or shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within thirty (30) days after the last day of the Concessioner's operation or as may otherwise be approved at the time by the Secretary.

Any payment made to the Secretary under this sub-section and consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communication System. An interest charge will be assessed on overdue amounts for each day that payment is delayed beyond the thirty (30) days period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(b) CAPITAL ACCOUNT. (b) (1) As partial consideration for the privileges granted by this CONTRACT, the Concessioner shall establish and manage a "Capital Account" (CA) by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations. Funds in the CA are not government funds. Funds in the CA, including interest earned thereon, will be used in accordance with Exhibit "D" only for construction of qualified improvements approved by the Superintendent in accordance with project proposals approved by the Regional Director, Intermountain Field Area.

(b) (2) Improvements paid for with funds from the CA will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by Sections 3(a), and 4(f) of this CONTRACT, or otherwise, from Concessioner funds exclusive of those funds contained in the CA. Funds in the CA shall not be used for purposes for which these Sections would apply. The Concessioner shall have no ownership, Possessory Interest or other interest in improvements made from the CA.

(b) (3) From the date of deletion of Section 1(e) through December 31, 1997, the Concessioner shall deposit within FIFTEEN (15) days after the last day of each month that the Concessioner operates a sum ("SUM") equal to ONE HALF OF ONE PERCENT (0.5%) of the Concessioner's Gross Receipts (a prorata amount for the month of transfer of the

Visitor Services Improvement Account balance) for the previous month, as defined in this CONTRACT, into an interest bearing account(s) at a Federally insured financial institution. From January 1, 1998, and thereafter, the sum to be deposited monthly shall be ONE PERCENT (1.0%) of the Concessioner's gross receipts as aforesaid. The account(s) shall be maintained separately from all other Concessioner funds, and, copies of monthly account statements shall be provided to the Secretary. The Concessioner shall submit annually as part of the annual financial statement required by the CONTRACT, a statement reflecting total activity in the CA for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

Additionally, the Concessioner shall deposit to the CA within sixty (60) days after the 31st day of December of each year during the remaining term of this contract, a sum ("SUM") equal to TWO AND SEVEN TENTHS PERCENT (2.7%) of the Concessioner's Gross Receipts for the previous year, or portion thereof with respect to calendar year 1997.

The balance in the CA shall be available for projects in accordance with the Account's purpose. Advances or credits to the CA by the Concessioner shall not be allowed except in accordance with the CONTRACT, as amended. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made in accordance with and subject to the terms and conditions of this CONTRACT, as amended. For all expenditures made for each project from CA funds, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

An interest charge will be assessed on overdue deposits for each day that the deposit is delayed beyond the fifteen (15) day period provided herein. The per cent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual. Interest rate information will be provided by the Superintendent to the Concessioner on request.

(b) (4) Upon the expiration or termination of this CONTRACT, or upon assignment or sale of interests related to this CONTRACT, the unexpended balance remaining in the CA shall, at the direction of the Secretary, be transferred to an account(s) approved by the Secretary and established by a successor concessioner, be expended by the Concessioner for approved projects, or shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within thirty (30) days after the last day of the Concessioner's operation or as may otherwise be approved at the time by the Secretary.

Any payment made to the Secretary under this sub-section and consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communication System. An interest charge will be assessed on overdue amounts for each day that payment is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual. Interest rate information will be provided by the Superintendent to the Concessioner on request.

G. The provisions of Contract Section 17 allow that the Secretary may, after December 31, 1973, terminate the preferential right to transportation services granted by the contract if it is determined by the Secretary that it would be in the public interest to do so. Leaving undisturbed the Concessioner's right to provide transportation services, the Secretary has determined that the public may be better served without the encumbrances on transportation to and from the park made necessary by the existence of such a preference. In accordance with the provisions of the CONTRACT, such preference is hereby eliminated.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names.

Executed in triplicate, at Denver, Colorado, this 4th 25th day of December November, 1997.

Amfac Resorts, Inc.

UNITED STATES OF AMERICA

By: Andrew M. Todd
President

By: [Signature]
Regional Director
Intermountain Region

Attest:

By: Stephen G. Tedder

Title Vice Pres.

Date 11/25/97

EXHIBIT A

FRED HARVEY, INC.
PHASE ONE
Improvement and Building Program

Construction to begin by July 1, 1969:

Business Center Complex

Restaurant with coffee shop, self-service area and dining room
containing in all 180 seats;

Gift shop;	Soda fountain, 50 seats;
Registration office;	Barber - beauty shops;
Camera shop;	Hopi dance amphitheater.
Service station expansion;	Estimated cost = \$645,000

Motor Lodge Area

Camper service building;
Replacement of 59 substandard units with economy units.
Estimated cost = \$360,000

El Tovar Area

Replace women's dormitory with visitor accommodations and raze dormitory.
Estimated cost = \$700,000

Construction to begin by July 1, 1970:

Bright Angel Area

Replace approximately 32 separate cabins with approximately 40 standard
multiple units.
Estimated cost = \$430,000

Construction to begin by July 1, 1971:

Yavapai Area

88 new standard overnight units
Estimated cost = \$800,000

Construction to begin by July 1, 1972:

Grand View Area

100-site campground

Estimated cost = \$175,000

EXHIBIT A

FRED HARVEY, INC.
 PHASE ONE
 Improvement and Building Program

Construction to be completed by December 31, 1973:

Business Center Complex

Food Service facility (dining and snack)

Cocktail Lounge

Gift Shop

Registration office

Estimated cost (furnished and equipped)	\$ 750,000
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Yavapai Area

192 new standard overnight units	\$1,700,000	
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Employees' resi,hall, Rouzer Hall, comp. 1970	389,068	
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Estimated cost		2,089,068
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El Tovar Area

Study of Colter Hall	5,000	
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Raze dormitory and replace with Kachina lodge (49 rooms)	735,000	
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Estimated cost		740,000
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Bright Angel Area

Improvements begun in 1969, including employees'

dining room, receiving dock, & kitchen renovation

Estimated cost	235,000
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New Employees' Residence Hall

50 to 60 rooms

Estimated cost	500,000
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Motor Lodge Area

Replace 89 substandard units w/90 standard units	785,000	
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Cafeteria, rehabilitate or replace (est.)	250,000	
---	---------	--

4 modular trailers (16 rooms)*	56,000	
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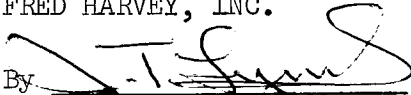
Estimated cost	1,091,000
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Total Cost, Phase One	5,405,000
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*modular trailer facilities may be expanded to 25-30 trailers.

Approved, effective March 4, 1971, by:

FRED HARVEY, INC.

By 

Title Executive V. P.

UNITED STATES OF AMERICA



Acting Director National Park Service

EXHIBIT B

GOVERNMENT-OWNED STRUCTURES ASSIGNED TO

FRED HARVEY, INC.

pursuant to

Concession Contract No. 14-10-2-900-158

<u>Building Number</u>	<u>Description</u>	<u>Annual Fee</u>
58	Power House Building	\$3,750

Total amount due pursuant to subsection 10(a)(1)

\$3,750

Approved, effective January 1, 1969, by:

FRED HARVEY, INC.

UNITED STATES OF AMERICA

By *Leah W. Smith*

Title *President*

Edward A. Linn
Acting Director, National Park Service

GOVERNMENT-OWNED STRUCTURES ASSIGNED TO

AMFAC RESORTS, INC.
pursuant to
Concession Contract No. CC-GRCA001-69

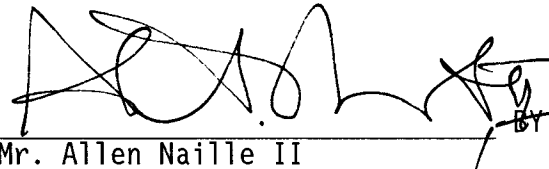
<u>Building Number</u>	<u>Description</u>	<u>Building Improvement Fund Allocation</u>
58	Power House Building	\$15,000
Total amount due pursuant to subsection 10(a)(1)		\$15,000 =====

Approved, effective January 1, 1990, by:

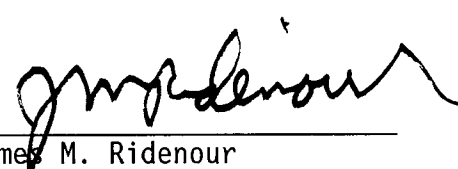
AMFAC RESORTS, INC.

UNITED STATES OF AMERICA

BY:


Mr. Allen Naille II
President

BY:

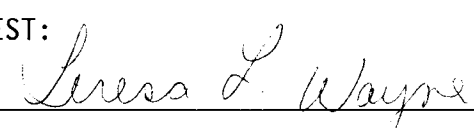

James M. Ridenour
Director
National Park Service

DATE:

11/16/90

ATTEST:

BY:



(Type name) Teresa L. Wayne

TITLE: Executive Secretary

DATE: 11/16/90

GOVERNMENT IMPROVEMENTS ASSIGNED
utilized pursuant to Section 4

<u>Building Number</u>	<u>Description</u>	<u>Account Allocation</u>
58	Power House Building	Per Section 10.1(a)(3) (\$15,000 per annum prorated monthly)

Exhibit "B" Approved effective 12-4-97

UNITED STATES OF AMERICA

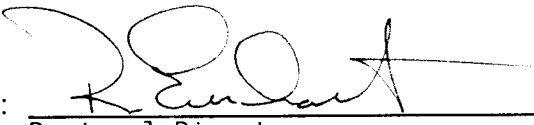
BY: 
Regional Director
Intermountain Region

EXHIBIT C

Concession

Contract No. 14-10-9-900-158

Date March 26, 1969

NONDISCRIMINATION

Requirements Relating to Employment and
Service to the Public

A. EMPLOYMENT: During the performance of this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this non-discrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers'

representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any sub-

contract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions A(1) through (7) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, or national origin; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations,

facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II: EMPLOYMENT OF THE HANDICAPPED

The following clauses apply to all concession permits, contracts and subcontracts which exceed \$2,500 as follows:

1. Part A applies to concessions permits, contracts, and subcontracts which provide for performance in less than 90 days.
2. Parts A and B apply to those concession permits, contracts, and subcontracts which provide for performance in 90 days or more and wherein the amount of gross receipts is under \$500,000.
3. Parts A, B, and C apply to those concession permits, contracts, and subcontracts which provide for performance in 90 days or more and the amount of the annual gross receipts is \$500,000 or more.

SECTION II: EMPLOYMENT OF THE HANDICAPPED

PART A

1. The Concessioner will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Concessioner agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment, upgrading, demotion or transfer, recruitment or recruitment advertising; lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Concessioner agrees that, if a handicapped individual files a complaint with the Concessioner that he is not complying with the requirements of the Act, he will (1) investigate the complaint and take appropriate action consistent with the requirements of 20 CFR 741.29 and (2) maintain on file for three years, the record regarding the complaint and the actions taken.
3. The Concessioner agrees that, if a handicapped individual files a complaint with the Department of Labor that the Concessioner has not complied with the requirements of the Act, (1) he will cooperate with the Department in the investigation of the complaint, and (2) he will provide all pertinent information regarding his employment practices with respect to the handicapped.
4. The Concessioner agrees to comply with the rules and regulations of the Secretary of Labor in 20 CFR, Ch VI, Part 741.
5. In the event of the Concessioner's noncompliance with the requirements of this clause, the contract may be terminated or suspended in whole or in part.
6. This clause shall be included in all contracts under which the estimated gross receipts are over \$2,500.

PART B

1. The Concessioner agrees (1) to establish an affirmative action program, including appropriate procedures consistent with the guidelines and the rules of the Secretary of Labor, which will provide the affirmative action regarding the employment and advancement of the handicapped required by PL 93-112, (2) to publish the program in his employee's or personnel handbook or otherwise distribute a copy to all personnel, (3) to review his program on or before March 31 of each year and to make such changes as may be appropriate, and (4) to designate one of his principal officials to be responsible for the establishment and operation of the program.
2. The Concessioner agrees to permit the examination by the Secretary of the Interior or his designee and/or the Assistant Secretary for Employment Standards, U. S. Department of Labor, or his designee, of pertinent books, documents, papers and records concerning his employment and advancement of the handicapped.
3. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Assistant Secretary for Employment Standards, U. S. Department of Labor, provided by the Concessioner stating the Concessioner's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.
4. The Concessioner will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contract understanding, that the Concessioner is bound by the terms of Section 503 of the Rehabilitation Act, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

PART C

1. The Concessioner agrees to submit a copy of his affirmative action program to the Secretary of the Interior and the Assistant Secretary for Employment Standards, U. S. Department of Labor, within 90 days after the award to him of a concession contract or subcontract.
2. The Concessioner agrees to submit a summary report to the Assistant Secretary for Employment Standards, U. S. Department of Labor, by March 31 of each year during performance of the contract, and by March 31 of the year following completion of the contract, in the form prescribed by said Assistant Secretary, covering employment and complaint experience, accommodations made and all steps taken to effectuate and carry out the commitments set forth in the affirmative action program.



United States Department of the Interior

*Grand Canyon
Let. Etc.*

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

C3823 MZ

APR 17 1975

Mr. William E. Maxwell
General Manager
Fred Harvey, Inc.
Grand Canyon, Arizona 86023

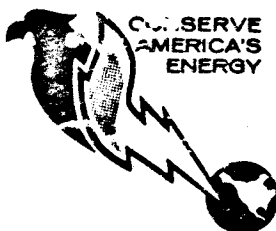
Dear Mr. Maxwell:

Please refer to the concessions contract with the National Park Service under which you are authorized to provide concession facilities and services for the public in an area of the National Park System.

Pursuant to your contract you are subject to laws enacted by the Congress subsequent to its effective date and to rules and regulations promulgated thereunder.

In this regard, we call your attention to P. L. 93-112, Rehabilitation Act of 1973 for the Employment of the Handicapped which was enacted September 26, 1973. This law, among other things, requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals. We enclose, for your information, a copy of Section 503 of the law.

Employment of handicapped persons and nondiscrimination practices in providing opportunities for jobs is an important government program which has now become part of our concessions program. We have, therefore, revised the "nondiscrimination" provisions. A new set of these clauses is enclosed which supersedes those in your contract. Section I on nondiscrimination contains no revisions. However, we wish to call your attention to the new Section II. A face sheet accompanies Section II explaining the applicability of the separate Parts A, B, & C. You will find that you must comply with either Parts A & B or with Parts A, B, and C, depending upon the size of your business and whether annual



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gross receipts are under or over \$500,000. All employers under Section II, A and B must prepare and carry out their affirmative action plans.

Part C covers those situations where gross receipts of the business are \$500,000 or more. The affirmative action plans and annual summary reports must be submitted to the Secretary of the Interior (superintendent), as well as to Mr. Bernard F. DeLand (or his successor), Assistant Secretary for Employment Standards, U. S. Department of Labor, Washington, D. C. 20212, within 90 days of the contract or subcontract award.

This requirement to prepare and enforce affirmative action plans for employment of the handicapped will henceforth apply to all ongoing contracts now in force with the National Park Service. We request your compliance. Accordingly, those concessioners affected by Part C must prepare and file such plans within 90 days from the date of this letter as above.

The content of these plans is more fully described in Title 20, CFR, Chapter VI subchapter C, Part 741, Section 741.4(a) through (e). This regulation appears in the copy of the Department of Labor regulations enclosed for your information.

Should you have any further questions about this matter, please do not hesitate to contact us for information.

Sincerely yours,

(Sgd) John E. Cook

Associate Director
Park System Management

Enclosures

cc:

Regional Director, Western Region (2)

MZ

EXHIBIT C

Concession
Contract No.: 14-10-9-900-158

NONDISCRIMINATION

SECTION I

Requirements Relating to Employment
and
Service to the Public

A. EMPLOYMENT: During the performance of this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary,

advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with

respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS:

The preceding provisions A(1) through (7) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, or national origin; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II: EMPLOYMENT OF THE HANDICAPPED

Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

PART A

The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

PART B

The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

PART C

In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

PART D

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

PART E

The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

PART F

The contractor will include the provisions of this clause in every subcontract that generates gross receipts which exceed \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

EXHIBIT D
ACCOUNT CONTROL

INTRODUCTION

For the purposes of this Exhibit, the term "Superintendent" hereinafter will refer to the "Superintendent or his/her designee." The term "Concessioner" hereinafter will refer to the Concessioner.

This document is about the use of funds. The source of these funds is established in the contract language at section 10.

The Government Improvement Account (GIA) and Capital Account (CA) are to be used to rehabilitate or construct facilities which directly support concessioner services authorized and/or required under this contract. Both CA and GIA are for "projects" and are established as contract obligations. There is no Possessory Interest accrued by the Concessioner for improvements made by these accounts. Use fees for assigned Government Improvements shall be established or adjusted as appropriate at the next fee reconsideration period when affected by improvements made using these funds.

Funds in GIA and CA accounts can be invested in various instruments in advance of being used to carry out the Concessioner's obligations under the contract. Whatever the method selected to hold the funds pending project work beginning, the parties to this contract agree that all funds will either be held in an account(s) insured by the Federal Deposit Insurance Corporation or a similar insuring activity of the Federal government and/or that all investment instruments will be notes, bills, and bonds issued by the United States Treasury which shall be whole instruments including both principal and interest (no derivative instruments) and which shall be directly backed by the full faith and credit of the United States of America.

The funds in the CA and GIA will be held in a short term asset management account(s) (STAM) established and owned by the Concessioner to carry out Concessioner obligations under this contract.

Deposits shall be made into CA and GIA accounts established by the Concessioner to carry out the purposes of the Contract. The Concessioner makes an irreversible commitment when deposits are made into a GIA or CA. Deposited funds do not become Government funds.

*** GRAND CANYON NATIONAL PARK - INTERMOUNTAIN REGION ***

**** NATIONAL PARK SERVICE ****

Any interest earned on CA or GIA balances becomes an addition to the balance of the CA or GIA. The Concessioner is responsible for taxes owed on such interest. GIA and CA funds cannot be used to pay such taxes.

GIA and CA funds must be maintained in separate accounts with record keeping used to maintain continuous records of the balances and allocation of income and expenses appropriate to each.

Concessioners are responsible for reporting or ensuring the reporting of CA and GIA activity each month and for annually filing, as part of their Annual Financial Report, the schedules that may be required by the Secretary.

The Concessioner shall not be paid or reimbursed in any way for account management. However, account management expenses billed by third parties with the written approval, in advance, of the properly delegated National Park Service authority may be considered as account expenses.

The Concessioner may, with the approval of the Superintendent, be allowed to charge the GIA or CA for actual expenses incurred, in an amount of ten percent (10%) for approved project expenditures.

CA and GIA funds are not to be used for the payment of routine maintenance and operating expenses of the Concessioner. Additionally, they are not to be used for maintenance of government property not assigned to the Concessioner or for government projects or activities not directly related to the provision of the involved concessioner's services.

CA and GIA funds are not to be used to pay or otherwise reimburse or credit Concessioner annual operating costs or government appropriation accounts, other than those specifically covered in this exhibit.

The contracts entered into by the Concessioner (or others should that be authorized) to undertake projects are private contracts, not government contracts, and are issued at an arm's length. The Concessioner shall not, directly or indirectly, enter into any arrangement or agreement whereby it receives money or other benefits from the contractor.

The Superintendent may require that the CA or GIA fund the cost of an independent, third party construction supervisor/inspector to represent the interests of the Government on any

project where the Superintendent feels that would be cost effective and necessary to the sound administration of the project.

The Concessioner shall ensure that a Builders Risk Form insurance policy is in effect during the construction. The type and amount of insurance will be approved in writing by the Superintendent. This policy is an appropriate expenditure from the CA or GIA.

In the event of any inconsistency between this Exhibit and the main body of the concession contract, the contract shall prevail.

POLICY FOR USE OF THE GOVERNMENT IMPROVEMENT ACCOUNT

The contract includes specific provisions establishing a GOVERNMENT IMPROVEMENT ACCOUNT (GIA) and describing its purpose or principal goals.

In every case, the Government Improvement involved must be assigned to the Concessioner for either exclusive or non-exclusive use by the Concessioner in carrying out the obligations of the Concession Contract. Such assignment should be made by modification of the applicable Exhibit of the contract including a map.

Appropriate GIA expenses would include major capital expenditures in government-owned structures assigned to concessioners for concession purposes, such as foundation, building frame, window frame replacement, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roofing, and similar. Projects could also include additions to buildings.

The account shall not be used for the operating costs of building systems or for minor adjustment and repair that would be the usual, routine responsibility of the Concessioner.

The account shall not be used for decorating costs, furniture, or periodic re-carpeting or other cosmetic work necessary. Neither would the account be appropriate for cleaning or landscaping care or similar routine upkeep activity.

The GIA shall not be used for seasonal opening and closing costs.

Decisions on use of funds are based on the facts of the particular situation. However, appropriate expenditures will typically be non-recurring within a five-to-seven year time frame.

It would not be appropriate to defer routine care to future GIA projects. Facilities should have a consistent high quality of maintenance and housekeeping. The Concessioner Review Program will be used to identify and correct problems in this area.

The Contract and Maintenance Plan both provide direction about the Concessioner's responsibility to maintain and repair facilities. The GIA is not intended to absorb such costs or to serve as an alternative to an active maintenance and repair program by the Concessioner, except that the GIA/CA project might deviate the need for a variety of such cost.

There is the possibility for abuse of the GIA when Concessioner maintenance responsibilities and GIA funds can be used for somewhat similar work. It is not the intention that the Concessioner be allowed to transfer repair and maintenance expense to GIA projects and thus reduce Concessioner operating costs and increase Concessioner operating profit.

Concessioner routine repair and maintenance expense should be monitored as a percentage of gross sales to assure that at least the expected or traditional level is sustained. Additionally, maintenance agreements should be sufficiently detailed so as to ensure that GIA/R&M disagreements do not occur. In particular, long term cyclic maintenance responsibilities (such as exterior painting) should be established as either repair and maintenance or GIA items for a particular park and be carried out in that way, consistently. The goal here is financial fairness for both parties to the Concessions Contract.

POLICY FOR USE OF THE CAPITAL ACCOUNT

The CA and its general purpose is established in the contract. The basis for the account is the need to establish systematically available funds for the ongoing improvement of concession facilities. The use of a CA allows reserves to be established for known requirements even while exact projects, construction timing, and planning are not yet resolved.

In every case, the Capital Account involved must be assigned to the Concessioner for either exclusive or non-exclusive use by the Concessioner in carrying out the obligations of the

Concession Contract. Such assignment should be made by modification of the applicable Exhibit of the Contract including a map.

CA projects include project planning, design, and construction of new buildings and infrastructure, rehabilitation of existing buildings and related infrastructure, demolition of old facilities, and site restoration. The CA can be used to supplement the GIA.

The CA is established to undertake nonrecurring projects of significant capital improvement to real property assigned to the Concessioner. The CA will not be used for routine or cyclic repair and maintenance except where a CA project would obviate the need for cyclic repair and maintenance. The CA will not be used for acquisition, lease or maintenance of personal property.

The CA may not be used for any building or facility encumbered by a possessory interest unless such possessory interest is defined in fixed dollar amounts and valued for any compensatory purposes at the depreciated book value of those fixed dollar amounts. Similar work on any other Concessioner Improvements must be funded separately by the Concessioner.

PROJECT NOMINATION AND APPROVAL

1. Spending money from CA or GIA requires a coordinated effort between the Concessioner and the Superintendent. Projects must be proposed, prioritized, approved, bid and accomplished with an orderly process that ensures accountability.
2. The National Park Service staff and/or the Concessioner may submit proposals to the Superintendent for the use of the CA or GIA using a format established by the Superintendent for "Account Project Nomination" (a standard control form). It is intended that a nomination form be the first step in the development of a project file.
3. The CA and GIA are predictable accumulations of funds. Project lists should be developed extending priorities over several years and projects initiated as funds are available. A contingency balance should be maintained for potential additions and adjustments.
4. The Superintendent will establish an Account Committee (AC) to review and recommend approval/disapproval of project nominations. The committee will include at least the Park's Concession Management Specialist and Concessioner representative in addition to other staff members deemed appropriate by the Superintendent. The Chair will be the park's lead

concession operative unless a different appointment is made by the Superintendent. The Superintendent will establish a process to review and approve/disapprove project nominations based on but not limited to the following:

- Applicable Laws and regulations
- NPS Policies
- Concession Contract and Amendments Including the Appropriateness of the Project Given the GIA or CA Purposes Stated in this Exhibit
- Operating and Maintenance Plans
- Need, based on resource impacts or human risk factors
- Compliance with NPS planning documents
- Other applicable factors

Upon completion of the review, the AC will prepare a record of the evaluation and a recommendation for approval/disapproval by the Superintendent. The documentation will be placed in the "**Project Statement**" (a standard control form).

5. Regional Director approval is required before projects can be advanced for implementation. This review is to consider the appropriateness of each project for accomplishment through the GIA or CA. It is not expected, at this point in the process that projects will have more than a rough estimate for a budget.

6. Approved projects will be implemented as funding and scheduling allow. Overall project management for the park will be the responsibility of the Superintendent.

7. A **Project Statement** will guide and document each project's implementation through completion. This Statement will contain the following: justification, specific proposal, scope of work, design responsibility, proposed project schedule and compliance requirements. The Project Statement will be signed by the Superintendent and the Concessioner's authorized representative. The signed Project Statement constitutes official authority for the Concessioner to begin work on the project.

The Project Statement will provide a chronological audit trail of the project's decision making activity including meetings, inspections, change orders, etc., from nomination to project completion. Support documents will be maintained in the Project File or reference in the Project Statement where related documents can be found.

SPECIFICATIONS, DESIGN, AND BIDDING

1.a. Work funded by a CA/GIA account is to be accomplished through competitive contracts in order to:

- (1) ensure contractually required maintenance work is not deferred by diverting Concessioner in-house personnel from that work,
- (2) promote effective cost/quality control by bidding jobs, and
- (3) avoid the appearance of conflict of interest by co-mingling sources and use of funds

1.b. Construction work will not be done by concession employees unless the Superintendent determines that there are unusual circumstances that make such work both advantageous and effectively managed. Concessioners may use sole-source contracts only with the prior approval of the Superintendent.

1.c. Concessioner may not bid as independent contractors, or be employed by the contractor for GIA and CA projects.

1.d. The Concessioner shall not directly or indirectly, enter into any contract whereby it benefits directly or indirectly through the transfer of funds or other benefits from a GIA or CA project contractor.

1.e. Exceptions to these policies may be granted in writing by the Superintendent on a case-by-case basis when there are unusual circumstances, clear advantages to the government, and adequate controls.

2. The Concessioner will develop a project description and a service proposal package sufficient to secure an architect or engineer. These will be reviewed and authorized in writing by the Superintendent.

3. Plans and specifications will be prepared by the architect or engineer and will follow NPS-10, NPS-48, and NPS-70. When design is involved in a project, the designs will be reviewed by the Superintendent as appropriate to the project, such as 50%, draft 100%

completion, etc. Appropriate time should be allowed for design review by appropriate NPS staff at park, region, or service center, or by independent consultants.

4. Once plans and specifications are approved, the Concessioner will prepare to advertise or otherwise solicit or secure estimates or bids for the project.

5. For each project, the package for bidding or estimating will include at least the plans and specifications, the General Provisions, and a draft contract or agreement under which the work will be carried out and that has been reviewed and approved by the Superintendent. If lodging and/or meals are provided by the Concessioner as part of the contract, the contract must include this provision and rates. If an action is not a construction project, prepare an appropriate package for that action and determine how to proceed to bid or otherwise secure cost estimates.

6. If the project is bid, the Concessioner will receive, open, and evaluate project bids.

7. The Concessioner will recommend and justify a contractor from among the bidders or from other sources if a bid process was not used. This recommendation will be accepted/rejected by the Superintendent in writing. Once confirmation has been issued, the Concessioner is authorized to sign a contract and proceed with the project.

8. At this time, the Concessioner will submit to the Superintendent an estimate of the final budget and time schedule for the project.

9. The Superintendent or representative will participate in on-site meetings with the Concessioner and project contractor.

10. The project will be inspected periodically by the Superintendent.

11. At appropriate intervals the Concessioner will submit to the Superintendent a project progress report enumerating project costs, with invoices, certificates, and other documentation; and work accomplished to date.

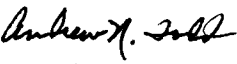
12. Change orders on project contracts require approval in writing from the Superintendent.

13. Upon certification from the contractor that a project is complete, the project will be inspected jointly by the Concessioner and the Superintendent. The project will not be accepted by the Concessioner until authorized in writing by the Superintendent.

14. Upon project completion, the Concessioner will submit to the Superintendent a project completion report including total project costs, warranties, service manuals, other similar documents, and as-built drawings of the project in the form specified. Invoices, certificates, and other documentation related to the final segment of work accomplished shall accompany the report and be the basis for final payment of the contractor. Final payment to the contractor and final reimbursement to the Concessioner for administrative costs shall not be made until the project has been accepted in writing by the Superintendent. The administrative fee may be taken on larger projects as payments are made to the contractor, but the fee must be for actual expenses incurred. The Concessioner is required to submit a summary of administrative costs for the project.

CONCESSIONER

UNITED STATES OF AMERICA

BY: 
President
Amfac Resorts, Inc.

BY: 
Regional Director
Intermountain Region

Date: 11-25-97

Date: 12/4/97